

The Commonwealth of Massachusetts State Ethics Commission

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GOVERNMENT DOCUMENTS
COLLECTION

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THE CONFLICT OF INTEREST LAW

and

HOUSING AUTHORITY MEMBERS AND EMPLOYEES

Housing Authority members and employees are municipal employees covered by the conflict of interest law (Chapter 268A of the General Laws.) The conflict law applies to all municipal employees, whether elected or appointed, full-time or part-time, paid or unpaid. Housing authority members are also "special municipal employees" to whom the law in some instances will apply in a less restrictive way.

The purpose of the conflict law is to ensure that your private interests and relationships do not conflict with your responsibilities as a housing authority member or employee. The law is broadly written to prevent you from becoming involved in a situation that could result in a conflict or give the appearance of a conflict. The law also regulates the activities of former employees and business partners of current and former employees.

"SPECIAL MUNICIPAL EMPLOYEE" STATUS

For municipal employees who have been designated "special," two sections of the conflict law -- Sections 17 and 20 -- apply less restrictively than they do to regular municipal employees. All other sections of the conflict law that affect municipal employees apply to special municipal employees in the same way.

The legislation creating housing authorities specifically states that "each member of a [a housing and redevelopment authority] ...shall be considered a special municipal employee." See G.L. c. 121B, §7. In so doing, the Legislature was careful to point out that the Board of Selectmen or City Council was not precluded from making other employees of such authorities "specials."

Housing authority employees who are not members may be designated as "special municipal employees" by the board of selectmen or city council. An employee may be designated as a special on formal vote by the appropriate board at any time provided that the employee:

1. is not paid; or
2. holds a part-time position which allows him or her to engage in other employment during normal working hours; or
3. was not paid by the municipality for more than 800 hours during the preceding 365 days.

All employees holding the same office or position must be treated equally -- having the same classification as special municipal employee. For example, if one part-time secretary at a housing authority is classified as a special, all part-time secretaries should be so classified.

Whether a member or employee of a housing authority is classified as a "special" will affect his or her eligibility to hold, and be compensated for, some other position in the city or town. If a public employee were not a "special," he or she would violate §20^{1/} of G.L. c. 268A if they held another position with their city or town.

As a special, employees are eligible for an exemption from §20 as long as:

1. they file with their city or town clerk a statement making full disclosure of the other employment relationship, and
2. the City Council or Board of Selectmen gives its approval to the special to hold that position.

BRIBES (Section 2)

Section 2 of the conflict law prohibits the most obvious kind of corruption: bribes. The law imposes criminal penalties, not only on officials who seek or receive payoffs or kickbacks, but also on private parties who offer or pay them. Criminal conviction under Section 2 bars you from holding any state, county or municipal position.

RESTRICTIONS ON ACCEPTING GIFTS (Section 3)

It is illegal to request or accept anything of "substantial value" from anyone with whom you have had or are likely to have official dealings (absent some family or social relationship that otherwise explains the gift), even if the motivation for the gift is to express gratitude for a job well done or to foster goodwill.

It is also illegal for a private party to offer or give anything of substantial value to a public official or employee if it is given "for or because of" some act the official has performed or will perform; this is true even if there is no corrupt intent on the part of either the giver or the receiver.

The Commission has deemed "substantial value" to be \$50 or more, in most cases. Under the conflict law waived fees, discounts, gift certificates and entertainment are all considered gifts; if their value amounts to \$50 or more, they are prohibited.

^{1/}Section 20 prohibits a municipal employee from having a financial interest in a contract with his or her city or town. Other employment contracts are included within this prohibition. The §20 exemption outlined above would also be available to members and employees who are specials and who have other kinds of contracts with their authority or district (for example, contracts to provide services to sell equipment, etc.).

PROHIBITED ACTIONS AFFECTING FINANCIAL INTERESTS (Section 19)

The law recognizes that your objectivity can be compromised when you act on matters in which you -- or a family member or close business associate -- have a financial stake. To discourage "self-dealing", the law prohibits you from participating in a particular matter in which you or any of the following have a financial interest:

1. your immediate family (you, your spouse and each of your parents, children, brothers and sisters);
2. your partner(s);
3. a business organization in which you serve as an employee, officer, director, trustee or partner (including a non-profit organization); and
4. any person or organization with whom you are negotiating or have any arrangement concerning prospective employment.

For example, as a housing authority member or employee you should not participate in any discussions or vote on awarding a contract to your brother's development company, nor should you act on applications from competitors. The best course of action is to leave the room during any discussions or votes concerning the matter.

In an October 1984 enforcement case, the Commission found two Randolph Housing Authority members in violation of this section of the law by participating in a decision to invest Housing Authority funds in a bank at which both members were employed.

In a March 1987 case, the Commission found the Mayor of Chelsea to have violated this section of the law by appointing his brother to the local housing authority.

A "particular matter" is defined by statute to include almost any proceeding, application, request for determination, contract, claim, finding, decision or controversy which might come before you. The definition refers to specific matters and proceedings rather than general issues. Section 19 does not apply if the particular matter involves a determination of general policy and your interest is shared with a substantial segment of the population of the town. For example, you could vote on raising or lowering local property tax rates, even if you are a homeowner, because your personal financial interest is shared with the majority of citizens in your town.

There is another exemption under Section 19 available to appointed municipal employees. Appointed municipal employees may act on a matter affecting their own, their family's or their business' financial interest only if they receive written permission from their appointing authority prior to taking any action.

PROHIBITED MUNICIPAL CONTRACTS AND MULTIPLE JOBS (Section 20)

Section 20 of the conflict law prohibits a municipal employee from having a financial interest in a contract with his or her city, town or any municipal agency. Employment is considered a contract, and thus this section prohibits housing authority employees from having a second job with their city or town.

However, an exemption to Section 20 is available to special municipal employees, including housing authority members and any authority employee who has been designated special. "Specials" may have an additional job with their city or town as long as they comply with the disclosure requirements outlined in the section of this summary on "Special Municipal Employee Status." Employees who have not been designated special may not hold more than one paid position with the city or town except under very limited circumstances.

The exemption to Section 20 for specials also allows "special" housing authority employees to hold an additional position with the housing authority, provided that they comply with the requirements outlined on page two of this summary.

In 1987, the Legislature amended Section 20 to allow municipal employees to rent property to tenants receiving rental subsidies administered by local housing authorities, unless the municipal employee/landlord in question is employed at the housing authority in a position that gives him or her authority over administering the subsidy program. Thus, housing authority employees who own residential property and who do not have responsibility for the administration of their authority's subsidy program may rent their property to tenants who receive housing authority subsidies.

The Legislature added another amendment to Section 20 in 1987, specifically permitting housing authority employees to hold any elective office other than mayor in their city or town, provided they are only paid for the elected position or the housing authority post. Individuals who are both elected officials and housing authority employees must also abstain from participating as elected officials in any particular matter that is within the purview of the housing authority, and they may not be appointed to any additional position until six months after leaving the elected position.

There are a number of other exemptions to the general rules regarding multiple office holding, in addition to the exemptions discussed above. All of the exemptions cannot be adequately explained in this summary. Please be sure to ask the Ethics Commission or your town counsel for advice concerning contracting with your town.

RESTRICTIONS AFTER HOURS (Section 17)

The law limits what you may do for someone other than the municipality you work for -- in other words what you may do on the side. This section is designed to protect both the housing authority members and employees and the municipality from the problems that result when people "serve two masters."

While you work for the housing authority, unless you are a special municipal employee, you may not act as agent or attorney for a private party before any town board, even if you are not paid (The term "attorney" is not limited to lawyers licensed to practice law. It is also applicable to those persons acting pursuant to a power-of-attorney). You also may not be compensated by anyone else in relation to any "particular matter" in which any agency of the same municipality is a party or has a direct and substantial interest. If you are a "special," you may represent private parties before town boards other than you own, as long as the particular matter in question is not one in which you have been involved as a municipal employee, or in which the housing authority is likely to become involved.

For example, if you, as a lawyer in private practice, become a housing authority member (and thus a special municipal employee), you would be allowed to represent a client before any town agency other than your own. If you were a regular municipal employee in the same position, you would be precluded from representing a client before any municipal agency.

The law also restricts the activities of business partners of current municipal employees. Your partner may not act as agent or attorney for anyone other than your city or town in connection with a particular matter in which you participate or that is subject to your official responsibility. For example, your business partner may not represent a developer in her application to the housing authority for an extension on her project.

MISUSE OF OFFICIAL POSITION (Section 23)

Section 23 provides a general code of conduct for all public employees. The conflict law prohibits you from using or attempting to use your official position to secure an unwarranted privilege for anyone or from giving a reasonable basis for the impression that you can be improperly influenced in the performance of your official duties. The law also prohibits you from disclosing confidential information obtained on the job and from accepting outside employment that will impair your independence of judgement in the exercise of your official duties.

In a 1982 case the Commission found a Worcester Housing Authority Deputy Director had violated Section 23 by securing discounts on personal purchases from private business that did business with the housing authority, and by using the housing authority's tax exempt organization number to avoid paying sales tax on a number of personal purchases. The Commission found the housing authority member used his official position to garner unwarranted privileges in these instances.

RESTRICTIONS AFTER YOU LEAVE GOVERNMENT SERVICE (Section 18)

Former housing authority members and employees may not use their past friendships and associations within government or use confidential information obtained while serving the government to derive unfair advantages for themselves or others. The law does not prevent you from using general expertise developed while employed by the housing authority. Rather, it focuses on particular matters you worked on at the housing authority.

If you participated in a particular matter as a housing authority member or employee you can never become involved in that same matter for a private party after you leave municipal service, except on behalf of your town. (This same restriction applies to your business partners for one year after you leave the board).

If you had official responsibility for a particular matter as part of the housing authority at any time within a two-year period prior to the termination of your employment, even if you did not actually participate in it, you may not appear before any municipal agency on behalf of a private party -- in connection with that matter -- for one year after leaving the board.

For example, if you voted to award a company a contract to provide computer services for the housing authority, you may not leave town government and work for the company on the same contract you voted on. You may, however, work for that company on other projects and you may also work for the company on town contracts proposed and awarded after you left the board.

ADVISORY OPINIONS

This summary presents a brief overview of the conflict law and suggests activities which you, as a housing authority member or employee, must avoid. It is not a comprehensive review. You may call the Ethics Commission's Legal Division at 727-0060 for particular advice on the conflict law, as well as seek an advisory opinion from your town or city counsel. As of April 1986, the Commission regularly reviews town counsel opinions on the conflict law.

If you have a question about your own activities, we urge you to request an opinion from your local counsel or directly from the Commission prior to engaging in the activity in question.

ISSUED: July 1989